

Special Civil Application No 4126 of 1983

Date of decision: 13th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GAJORA DEVRAJ KARAMSHI

VS

GEORGE JOSEPH K

Appearance:

Shri Y.S.Mankad, Advocate, for the Petitioners.

Shri D.N.Patel, Assistant Government Pleader, as instructed by Messrs Purnanand & Company, for Respondents Nos.1 to 3.

Respondent No.4 served.

Coram : MR.JUSTICE A.N.DIVECHA

13th February 1996

ORAL JUDGEMENT

The order passed by the Collector of Kutch at Bhuj (respondent No.1 herein) on 2nd June 1984 and the consequential order passed by the Deputy Collector at Anjar (respondent No.2

herein) on 21st June 1983 are under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 ordered resumption of one parcel of land bearing survey No.324/1 (Part) admeasuring 8 acres 04 gunthas (the disputed land for convenience) under section 96 (4) of the Gujarat Panchayats Act, 1961 (the Act for brief) and ordered its conversion in the village site for the purpose of allotment to various backward class landless persons by way of small plots therefrom. Pursuant thereto, respondent No.4 has passed the necessary order on 21st June 1983 for assignment of the disputed land as a village site for the purpose of its disposal in various small plots on certain terms and conditions.

2. It appears that certain backward class landless persons were granted small areas of land from one parcel of land bearing survey No.342 (Part) admeasuring 5 acres and assigned as a village site. That land was however found to be about 1 km. away from the main village site. They therefore prayed for allotment of the land from survey No.324/1 (Part) admeasuring 8 acres 04 gunthas. It was vested in the Gram Panchayat of Amardi (respondent No.4 herein). It was required to be resumed by and on behalf of the State of Gujarat (respondent No.3 herein) and to be assigned as a village site. It appears that a show cause notice was thereupon issued some time in February 1983 calling upon respondent No.4 to show cause why the land should not be resumed by the Government in exercise of its powers under section 96 (4) of the Act. It appears that the Panchayat gave its reply on 11th March 1983. After hearing the Sarpanch of respondent No.4, by the order passed on 2nd June 1983, respondent No.1 ordered resumption of the disputed land by the Government in exercise of the powers under section 96 (4) of the Act. Its copy is at Annexure-C to this petition. Since it was required to be assigned as a village site, respondent No.2 passed the necessary order on 21st June 1983 and placed it at the disposal of respondent No.4 Panchayat for the purpose of allotment of small areas of land to various backward class landless persons. Its copy is at Annexure-D to this petition. The orders at Annexures-C and D to this petition have aggrieved the present petitioners. They have therefore approached this court by means of this petition under Article 226 of the Constitution of India for questioning their correctness.

3. It is the case of the petitioners that they were in exclusive occupation and possession of different areas of land from the disputed land and they have not been heard before passing of the impugned orders at Annexures-C and D to this petition. In fact, the petitioners claim ownership of small areas of land from the disputed land. Whether or not they are owners of small areas of land from the disputed land will involve investigation into some factual position and the petitioners will have to establish their claim by adducing the necessary evidence.

This court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India will be disinclined to enter into disputed questions of fact.

4. It transpires from the impugned orders at Annexures-C and D to this petition that the disputed land had vested in respondent No.4 prior to its resumption pursuant to the order at Annexure-C to this petition. If the petitioners have any claim therein, they may take out an appropriate proceeding before an appropriate forum or they may institute a suit before the competent court for the purpose of establishing their claim as advised. Their petition under Article 226 of the Constitution of India cannot be entertained as this court will be disinclined to examine any disputed question of fact.

5. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The interim relief stands vacated.

6. At the oral request of learned Advocate Shri Mankad for the petitioners, the interim relief is ordered to continue for a period of three months from today with a view to enabling the petitioners to approach the appropriate forum either for challenging this judgment of mine or for establishing their claim before an appropriate forum as advised.

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